

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GRANT CLEVERLEY, in his individual  
capacity and on behalf of nominal plaintiff  
ALLSITE STRUCTURE RENTALS, LLC,  
also a defendant herein,

Plaintiff,

vs.

CHARLES BALLANTYNE, an individual;  
ALLSITE STRUCTURE RENTALS, LLC,

Defendants.

Case No. 2:12-cv-00444-GMN-GWF

**ORDER**

This matter is before the Court on Plaintiff's Objections and Request for Partial Reconsideration of Court's Order on Defendants' Partial Motion to Dismiss and/or Strike Second Amended Complaint (#177), filed on February 7, 2014. Defendants filed their Response to Plaintiff's Objections and Request for Partial Reconsideration (#181) on February 24, 2014. Plaintiff filed his Reply (#182) on March 6, 2014. The Court conducted a hearing in this matter on March 14, 2014.

**BACKGROUND AND DISCUSSION**

In Order (#173), the Court dismissed, with prejudice, that part of Plaintiff's Second Amended Complaint that alleges that Defendant Allsite breached a contractual duty under the terms of the parties' Purchase and Sale Agreement to make a distribution to Plaintiff to pay his 2010 tax liability arising out of his fifty (50) percent ownership interest in Allsite. The Court concluded that such a claim is contrary to the clear terms of the Agreement which states as follows:

1           SECTION 4. Tax Obligations. Seller is responsible for any and all  
2           pro-rata income tax obligations associated with his ownership of the  
3           50% of the Company through the Effective Date. Seller will receive  
4           a Form K-1 for year 2011 from the Company and will be responsible  
5           for payment of any and all taxes associated with it. Seller is  
6           responsible for any and all taxes associated with the sale of the  
7           Member Interest, including but not limited to capital gains taxes.

8           *Purchase and Sale Agreement, pg. 4.*

9           Plaintiff concedes that his objection to Order (#173) and request that the District Judge  
10          overrule that order does not lie in that the parties consented to have the Magistrate Judge conduct  
11          all proceedings in this case including trial, the entry of final judgment and all post-trial proceedings  
12          in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.Pro. 73. *See Order (#146), filed October 23,*  
13          *2013.* Notwithstanding Plaintiff's procedural error in objecting to the order, the Court has  
14          considered Plaintiff's Objections and Request for Partial Reconsideration (#177) under the general  
15          standards applicable to motions for reconsideration: Whether the court (1) is presented with newly  
16          discovered evidence; (2) committed clear error or its initial decision was manifestly unjust; or (3)  
17          there has been an intervening change in controlling law. *See Marlyn Nutraceuticals, Inc. v. Mucos*  
18          *Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).* The only factor arguably applicable  
19          here is that the Court committed clear error in Order (#173).

20          Having reviewed the briefs of the parties and heard argument by counsel, the Court finds  
21          that there is no basis to conclude that Order (#173) is clearly erroneous or manifestly unjust. To the  
22          contrary, the Court remains convinced that the plain language of Section 4 of the Purchase and Sale  
23          Agreement, read in accordance with the agreement as a whole, provides that Plaintiff was  
24          responsible for the payment of his 2010 tax liability. Accordingly, Defendant did not breach the  
25          terms of the Purchase and Sale Agreement by refusing or failing to make such a distribution.

26          As the Court has previously stated, however, Plaintiff may pursue a claim for damages  
27          based on his claim that he was fraudulently induced to enter into the Purchase and Sale Agreement  
28          by Defendants' false representations regarding the estimated amount of Plaintiff's 2010 tax  
29          liability. Order (#173) also does not preclude Plaintiff from hereafter claiming a right to a  
30          distribution to cover a portion of his tax liability if he is successful in establishing that Allsite  
31          otherwise breached the Purchase and Sale Agreement and Plaintiff is restored to the ownership of a

1 portion of Allsite. Accordingly,

2 **IT IS HEREBY ORDERED** that Plaintiff's Objections and Request for Partial  
3 Reconsideration of Court's Order on Defendants' Partial Motion to Dismiss and/or Strike Second  
4 Amended Complaint (#177) is **denied**.

5 DATED this 17th day of March, 2014.

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8 GEORGE FOLEY, JR.  
9 United States Magistrate Judge  
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